

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
JACKIE HENDRY, :  
:  
Plaintiff, :  
: 23-CV-10107 (VSB)  
- against - :  
:  
: **ORDER**  
:  
AMERICAN SOCIETY OF COMPOSERS, :  
AUTHORS, AND PUBLISHERS, d/b/a :  
ASCAP, :  
:  
Defendant. :  
:  
-----X

VERNON S. BRODERICK, United States District Judge:

On January 31, 2024, Plaintiff filed an amended complaint pursuant to Federal Rule of Civil Procedure 15(a)(1)(B). (Doc. 16.) “[W]hen a plaintiff properly amends [a] complaint after a defendant has filed a motion to dismiss that is still pending, the district court has the option of either denying the pending motion as moot or evaluating the motion in light of the facts alleged in the amended complaint.” *Pettaway v. Nat'l Recovery Sols., LLC*, 955 F.3d 299, 303–04 (2d Cir. 2020). Accordingly, it is hereby:

ORDERED that Defendant shall file a letter within seven (7) days deciding whether its motion to dismiss should be deemed moot without prejudice to refile a new motion to dismiss in accordance with Federal Rule of Civil Procedure 15(a)(3), or if I should evaluate Defendant’s current motion to dismiss in light of the facts alleged in the amended complaint.

SO ORDERED.

Dated: February 1, 2024  
New York, New York



Vernon S. Broderick  
Vernon S. Broderick  
United States District Judge